U.S. Department of Homeland Security
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Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 24 2005

IN RE: Applicant: [redacted]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 210 of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1160

ON BEHALF OF APPLICANT:

[redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the District Director, San Francisco. It was reopened and denied by the Director, Western Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The directors denied the application because the applicant failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the eligibility period. These decisions were based on the applicant's admission that he had not worked for as claimed.

On appeal, the applicant admitted that he did file a fraudulent letter in an attempt to obtain a benefit. He claimed that he actually had worked for another employer.

In order to be eligible for temporary resident status as a special agricultural worker, an alien must have engaged in qualifying agricultural employment for at least 90 man-days during the twelve-month period ending May 1, 1986, and must be otherwise admissible under section 210(c) of the Act and not ineligible under 8 C.F.R. 210.3(d). 8 C.F.R. 210.3(a). An applicant has the burden of proving the above by a preponderance of the evidence. 8 C.F.R. 210.3(b). When something is to be established by a preponderance of evidence it is sufficient that the proof only establish that it is probably true. See generally, McCormick, Evidence sec. 339 (2d ed. 1972).

On the Form I-700 application, the applicant claimed to have performed 95 man-days of qualifying agricultural employment for at Gill Farms in Tulare, California from May 1985 to May 1986. In support of the claim, the applicant submitted two affidavits from

The applicant was then interviewed by an officer of the Immigration and Naturalization Service. According to the notes of the officer, the applicant said that his nephew bought the fraudulent documents for him. The applicant also said, according to the officer, that he first entered the United States in March 1985, left in June of that year, and next returned in November 1988.

The district director then denied the application, finding the applicant's claim to have worked for to be fraudulent. On appeal, the applicant claimed that he really had worked for and admitted that his claim to have worked for was fraudulent.

The center director then reopened the matter, and sent a notice of intent to deny to the applicant, which reiterated the finding of fraud. In response, the applicant submitted an earnings history from Brothers/Wheeler Farms, signed by , showing the applicant was employed from December 1982 to October 1986. Mr. also furnished a letter in which he indicated his willingness to come forward and testify personally.

The center director denied the application, finding that the applicant's new claim was not credible.

Generally, the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility, and amenability to verification. 8 C.F.R. 210.3(b)(1). Evidence submitted

by an applicant will have its sufficiency judged according to its probative value and credibility. 8 C.F.R. 210.3(b)(2). Personal testimony by an applicant which is not corroborated, in whole or in part, by other credible evidence (including testimony by persons other than the applicant) will not serve to meet an applicant's burden of proof. 8 C.F.R. 210.3(b)(3).

There is no mandatory type of documentation required with respect to the applicant's burden of proof; however, the documentation must be credible. All documents submitted must have an appearance of reliability, i.e., if the documents appear to have been forged, or otherwise deceitfully created or obtained, the documents are not credible. *United Farm Workers (AFL-CIO) v. INS*, Civil No. S-87-1064-JFM (E.D. Cal.).

The applicant attempted to acquire temporary residence status by fraud. He is thus inadmissible under section 212(a)(6)(C)(i) of the Act, which states that an alien who sought to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act is inadmissible.

Nevertheless, a determination must still be made as to whether the applicant has demonstrated *by a preponderance of evidence* that he engaged in qualifying agricultural work to the degree required for special agricultural worker status. Many applicants have made "new claims" of employment when confronted with adverse evidence regarding their initial claims. In the vast majority of the cases, the aliens have simply submitted form affidavits attesting to such new claims. Most of the claims relate to the minimal amount of man-days needed in the twelve-month period to qualify for temporary residence. There are a few indications that the applicant's new claim may, more likely, be valid. Although the interviewing officer noted that the applicant stated that he was out of the United States from June 1985 through November 1988, the applicant did not sign any statement to that affect. The earnings history furnished by [redacted] if authentic, show the applicant was in the United States and working in agriculture from May 1985 to May 1986, and in fact before and after that priod. The earnings history and letter from [redacted] are on letterhead stationary and bear his actual signature, and have the appearance of authenticity. Mr [redacted] indicated the location of the original company records, and offered to testify further if necessary, but he was not called on to do so.

It is also noted that the new claim in this instance does not simply reflect a minimum of 90 days of employment, but rather encompasses employment from 1982 to 1986. On the face of it the applicant's claim seems more realistic than those claiming they just happened to work in agriculture for the 90 days needed between May 1985 and May 1986.

The applicant's original false claim raises significant credibility issues in terms of anything he subsequently claims or submits. Were he required to prove his qualifications under a "clear and convincing" standard, or a "beyond reasonable doubt" standard, his claim to have worked for Bidart Brothers would likely be dismissed. However, under the lower "preponderance of evidence" standard, it appears more likely than not that he did work for Bidart. It is, therefore, concluded that the applicant performed the requisite qualifying agricultural employment during the twelve-month statutory period ending May 1, 1986.

Although the appeal will be sustained, the applicant remains ineligible for temporary residence due to his inadmissibility, as described above. The director shall accord the applicant the opportunity to apply for a waiver of such inadmissibility.

ORDER: The appeal is sustained.